Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

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CASE AND COMMENT

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Defense of Gambling.

A senator boldly contending in the legislature that the state has no business to interfere with gambling, except so far as it endangers public funds, does not do honor to the state of New York. Such a view logically involves a denial of the right of the state to restrict vice of any kind. It would allow interference with even the worst class of disorderly houses only so far as necessary to prevent the misuse of public money. It is a view that will be popular among all those who profit by pandering to vice; but it deserves no respect from the legal standpoint. The constitutional right of the state to legislate for the restriction and repression of any class of business that demoralizes and degrades its patrons is as clearly established as the right to legislate for the protection of public funds. Police power to protect the morals, as well as the health and safety, of society, has so long been established by a multitude of decisions that any denial of it can mislead only the ignorant. One of the many cases in which the law of this subject is set forth very clearly is the case of Ford *v.* State, 85 Md. 465, 41 L. R. A. 551, 37 Atl. 172, which sustains the constitutionality of the lottery laws.

Far more damaging to the public welfare than any foolish and baseless contention of the unconstitutionality of gambling laws is the tacit license given by public officials to conduct gambing enterprises in plain violation of the Penal Codes, when carried on by people of good standing in society. With peculiar meanness, many who deem themselves respectable citizens claim the privilege of exemption from the laws against vices of this kind. They practically demand a monopoly of vice because of their respectability, and their demand, so far as gambling is concerned, is tacitly conceded by the authorities. A typical instance was one in which at the very time when the police authorities of a city were suppressing turkey raffles in saloons, nearly all the prominent city officials were taking active interest in a fair of a great fraternal organization at which "drawings" or "allotments" were made for prizes of almost every description, and some of them of much value. While the grab bag and lottery features that once disgraced the churches belong chiefly to the past, and will not be tolerated by most churches of to-day, it is still, unfortunately, the case that drawings are a regular feature of some church fairs, and are publicly advertised in defiance of the penal statutes. In such cases when a powerful fraternity or church offends against the law, is there any mayor or other official who dares to enforce it or even to mention its existence?

Compelling Testimony against Gamblers.

The public interest that has been aroused in connection with the bill relative to the examination of witnesses in gambling cases, introduced in the New York legislature by Senator Dowling, in aid of District Attorney Jerome's efforts to convict New York gamblers, has developed a discussion as to the constitutionality of such a statute. It has been contended that such a statute violates the provisions of the state and Federal Constitution, which declare that a person shall not be compelled to be a witness against himself in a criminal case. The Dowling bill, which declares that no person shall be excused from testifying in a gambling prosecution on the ground that his testimony might tend to criminate him, attempts to avoid the effect of the constitutional provision by declaring that such a witness shall not be prosecuted or subjected to any penalty or forfeiture on account of the transaction concerning which he testifies. The question whether such an exemption from prosecution is a sufficient compliance with the Constitution has been a source of some differences of legal opinion. In an annotation to 14 L. R. A. 407, supplemented by an annotation to 26 L. R. A. 418, the authorities on the question are collated, and it there appears that the weight of authority is in favor of upholding the constitutionality of such statutes, provided the protection given the witness is sufficiently broad to protect him from all prosecutions arising, either directly or indirectly, out of the transaction testified to. Such appears, by such annotation, to be the rule in New York state, in support of which it cites People *ex rel.* Hackley *v.* Kelly, 24 N. Y. 74, and People *v.* Sharp, 107 N. Y. 427, 14 N. E. 319. Since the annotations were written, the question has been squarely decided by the Supreme Court of the United States in Brown *v.* Walker, 161 U. S. 591, 40 L. ed. 819, 16 Sup. Ct. Rep. 644, which involved the provision of the Federal Constitution; and this rule was there upheld, though by a divided court, —four of the judges dissenting. While this case is not conclusive upon the courts of New York state in construing the same provision in its Constitution, yet, viewed in connection with the New York cases cited in the L. R. A. annotation, it leaves but little ground for doubting the constitutionality of the Dowling bill. Under these decisions, the only danger in such a bill arises from the fact that it may not sufficiently protect the witness from future prosecution; but this danger is provided against in the Dowling bill, as it is copied from the Federal statute involved in Brown *v.* Walker. That statute exempted witnesses testifying before the Interstate Commerce Commission from prosecution on account of the transaction to which they might testify. It was adopted to avoid the effect of the decision in Counselman *v.* Hitchcock, 142 U. S. 547, 35 L. ed. 1110, 3 Inters. Com. Rep. 816, 12 Sup. Ct. Rep. 195, which held that the statute there involved, which attempted to protect the witness, did not afford him that complete protection which the Constitution was intended to guarantee. Mr. Justice Brown, in delivering the opinion of the court in the Brown Case, said that the clause of the Constitution is susceptible of two interpretations,—"if it be construed literally, as authorizing the witness to refuse to disclose any fact which might tend to incriminate, disgrace, or expose him to unfavorable comments; then, as he must necessarily to a large extent determine upon his own conscience and responsibility whether his answer to the proposed question will have that tendency, . . . the practical result would be, that no one could be compelled to testify to a material fact in a criminal case, unless he chose to do so, or unless it was entirely clear that the privilege was not set up in good faith. If, upon the other hand, the object of the provision be to secure the witness against a criminal prosecution, which might be aided directly or indirectly by his disclosure, then . . . a statute absolutely securing to him such immunity from prosecution would satisfy the demands of the clause in question." It was to this latter interpretation that the court adhered. The case of People *ex rel.* Hackley *v.* Kelly, 24 N. Y. 74, referred to in the annotation, and which established the rule in New York, involved the bribery act of 1853, and declared that any person offending against its provision should be a competent witness against any other person so offending; but that the testimony so given should not be

used in any prosecution, civil or criminal, against the person so testifying. The court, in upholding the constitutionality of the statute, said that neither the law nor the Constitution is so sedulous to screen the guilty as the argument against the statute supposes; that, "if a man cannot give evidence upon the trial of another person without disclosing circumstances which would make his own guilt apparent, or at least capable of proof, though his account of the transactions should never be used as evidence, it is the misfortune of his condition, and not any want of humanity in the law." The court further said that, if the case is so situated that the repetition of the testimony given by the witness on a prosecution against him is impossible, as where it is forbidden by a positive statute, the witness is not privileged. This decision was subsequently followed and adhered to in People v. Sharp, 107 N. Y. 427, 14 N. E. 319.

Keeping Photograph and Measurements of Accused after His Acquittal.

The denial by the courts of the application of Molineux for a mandamus to compel the removal of his photograph and measurements from the records of the superintendent of state prisons has attracted wide attention and much adverse comment from the press. The decision by the court of appeals of New York to this effect is, however, fully justified by the opinion of Judge Vann. It says that by the New York statutes these records are required to be made for every convict or prisoner "received under sentence," and that there is no provision of law by which this official record can be destroyed or surrendered. Therefore, it is not the duty of the officer to give up the records or any part of them, and the courts cannot order him to do what it is not his duty to do. The contention that Molineux was not a convict or a prisoner received under sentence was rejected by the court, and little can be said in favor of it, since he had been convicted, adjudged guilty, and sentence of death pronounced against him before the photograph and measurements were taken. Therefore, while the sentence remained in force it seems clear that he was a convict and a prisoner under sentence, though his conviction was subsequently reversed and a new trial ordered, which afterward resulted in an acquittal.

The injustice of perpetuating the photograph and Bertillon measures of an innocent man after his innocence has been adjudged may be strongly urged, but it is clearly a matter for the legislature to say whether or not public policy requires such records, once made, to be preserved. The perpetuation of a judicial record of the trial of an innocent man may, as the court well points out, be very unpleasant to him, but such records are always preserved. It is not likely to be argued that such records ought to be expunged. The record itself, though it may be humiliating to the person who has been accused, is, nevertheless, his shield against a repetition of the same accusation after his acquittal. But the retention of his photograph and measurements among those kept for convicts seems to be an unnecessary humiliation, which the public does not require him to endure. It is unquestionably a matter for the legislature to determine, and no good reason appears why the legislature should not provide for the removal of the portrait and physical measurements of one who has been adjudged innocent from the portraits and records of convicts. At this time there seems to be a fair prospect that something may be done in this respect by the legislature now in session.

Duty to Warn Street Car Passengers of Danger in Park.

A new element of liability on the part of street railway companies to passengers is presented in the recent case of Indianapolis Street R. Co. v. Dawson (Ind. App.) 68 N. E. 909, in which it is held that a street railway company was liable in damages to colored passengers whom it transported to a park owned and maintained by the company, with attractions to induce people to go there upon its cars, where it had knowledge of the purpose of lawless persons congregated there to assault and beat any colored men that came there, and knew that such assaults had already been made, but took no steps to prevent them, and gave no warning of the danger to the

colored passengers. This case was decided on demurrer to the complaint alleging such facts. The decision, though a novel one, seems entirely just, and supported by principle. A case somewhat similar is that of Penny *v.* Atlantic Coast Line R. Co. (133 N. C. 221,) 45 S. E. 563, in which a railroad company was held liable for failure to give warning to a passenger of his danger before alighting at a station where he was accidentally shot during a kind of battle that had begun on the train and was being continued outside of it as the train stopped.

The liability of a street railway company as the owner of a park to which it invites the public, without regard to any question of liability as a carrier, is, of course, like that of any other owner of such park. The liability of the owner of a private park, who invites the public to an exhibition of fireworks there, is upheld in Sebeck *v.* Plattdeutsche Volksfest Verein, 64 N. J. L. 624, 50 L. R. A. 199, 46 Atl. 631, although the injury to a visitor at the park was caused by the negligence of an independent contractor.

That the owners of a park are liable for negligence in the management of a horse race, causing injury to a bystander, is clearly recognized in Hart *v.* Washington Park Club, 157 Ill. 9, 29 L. R. A. 492, 41 N. E. 620, and Hallyburton *v.* Burke County Fair Asso. 119 N. C. 526, 38 L. R. A. 156, 26 S. E. 114, although in those cases it was found that the allegations of negligence were not proved.

The liability of a street car company owning a park for negligence of an independent contractor in managing a baloon ascension there, causing the death of a spectator, is sustained in Richmond & M. R. Co. *v.* Moore, 94 Va. 493, 37 L. R. A. 258, 27 S. E. 70, on the ground that the company owned the park and invited the public there, without regard to the fact that he did not go there as a passenger on the defendant's cars. In the Indiana case, as in this, the liability of the street railway company is not based on its character as a common carrier, but on its ownership of the place to which the public is invited. The same is true of the case of Thompson *v.* Lowell, L. & H. Street R. Co. 170 Mass. 577, 40 L. R. A. 345, 49 N. E. 913, in which a street railway company was held liable for the negligence of an independent contractor in an exhibition of marksmanship given as an entertainment on grounds maintained by the company as a pleasure resort to which it invited the public.

In all these cases the question is decided without regard to the law especially applicable to common carriers, and the street railway company is treated as any other owner of the premises would be.

Index to New Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 62, Parts 5 and 6.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

Among the New Decisions.

Accord and Satisfaction.

The mere payment by a debtor of an amount denominated "a balance" upon an account rendered, and its retention by the creditor, are held, in Harrison *v.* Henderson (Kan.) 62 L. R. A. 760, not to constitute an accord and satisfaction.

Acknowledgment.

See MORTGAGE.

Action.

See PUBLIC INSTITUTIONS; SOLICITATION.

Animals.

Rules of a state board of live-stock commissioners providing for applying a tuberculin test to all cattle that are brought into the state for dairy or breeding purposes, but exempting all other kinds, are held, in Pierce *v.* Dillingham (Ill.) 62 L. R. A. 888, to be invalid.

Arrest.

The possession by an officer of a warrant is held, in McCullough *v.* Greenfield (Mich.) 62 L. R. A. 906, not to justify an arrest of the accused by the police department of another town under direction by telephone to it by the officer holding the warrant.

Bankruptcy.

A final money judgment for the total

amount due from the putative father of a natural child, on his refusal to pay a monthly stipend for its support imposed upon him by an order in bastardy proceedings, is held, in McKittrick *v.* Cahoon (Minn.) 62 L. R. A. 757, to be extinguished by a discharge in bankruptcy.

Banks.

A bank cashier is held, in Taylor *v.* Commercial Bank (N. Y.) 62 L. R. A. 783, not to be acting within the scope of his authority in giving information as to the value of notes executed by customers of the bank, so as to render it liable in case the statements prove to be untrue.

Bills and Notes.

See GUARANTY.

Bills of Lading.

Neither a bank which purchased a draft for a consignment of grain with bill of lading attached, nor the payees who indorsed and delivered it to the bank, are held, in Hall *v.* Keller (Kan.) 62 L. R. A. 758, to be liable to the drawees, the consignees of the grain, who accepted and paid the draft, for failure of title in the drawer to the property shipped.

A bank which purchases a draft with bill of lading attached is held, in S. Blaisdell, Jr., Co. *v.* Citizens' Nat. Bank (Tex.) 62 L. R. A. 968, not thereby to become a party to the sale, so as to be responsible to the consignee in case, after he has paid the draft, the bill of lading proves to be fraudulent, so that the consideration fails.

Carriers.

Injury to a passenger on a street car by the conductor is held, in Kohner *v.* Capital Traction Co. (D. C.) 62 L. R. A. 875, not to render the company liable, as matter of law, where the conductor explains his conduct by telling that, in passing along the footboard on the side of the car, he lost his balance, and, to save himself from falling, reached for the stanchion, when his hand came in contact with the plaintiff.

Clubs.

See INTOXICATING LIQUORS.

Constitutional Law.

To impose upon a court the duty of receiving and acting on petitions for the submission to the voters of the question whether or not intoxicating liquors shall be sold is held, in Supervisors of Elections *v.* Todd (Md.) 62 L. R. A. 809, to be beyond the power of the legislature, under a constitution separating the departments of government.

A law providing for a special jury is held, in Eckrich *v.* St. Louis Transit Co. (Mo.) 62 L. R. A. 911, not to be made unconstitutional by requiring the fee to be deposited by one applying for it, which puts it out of the reach of a poor man to have a special jury.

Contracts.

A clause in an agreement selling a partnership business, that "we agree and bind ourselves not to enter into or conduct" a similar business in the territory covered by the business sold, which is signed by the partners in their individual names, is held, in Raymond *v.* Yarrington (Tex.) 62 L. R. A. 962, to bind the parties individually.

Courts.

See CONSTITUTIONAL LAW.

Covenants.

A general covenant of warranty in a deed of a tract of land is held, in West Coast Mfg. & I. Co. *v.* West Coast Improv. Co. (Wash.) 62 L. R. A. 763, to extend to tide lands visibly within the limits of the grant, the paramount title to which at the time of the grant is in the state.

Eminent Domain.

In a proceeding by a magnetic telegraph company for the purpose of appropriating to its use a part of the right of way of a railroad company it is held, in Cleveland, C. C. & St. L. R. Co. *v.* Ohio Postal Teleg. Cable Co. (Ohio) 62 L. R. A. 941, to be necessary and jurisdictional for the court to hear and determine, and so enter of record, that the easement sought to be appropriated by such telegraph company will not in any material degree interfere with the practical uses to which the railroad company is authorized to put such right of way.

Writing otherwise irrelevant and not admitted to be genuine is held, in University of Illinois *v.* Spalding (N. H.) 62 L. R. A. 817, to be admissible in evidence for comparison with the disputed writings in the case, if they have been found to be genuine by the presiding judge upon clear and undoubted evidence.

Food.

An ordinance requiring the inspection of milk sold within the limits of the city, and providing for the licensing of vendors, is held, in Norfolk *v.* Flynn (Va.) 62 L. R. A. 771, not to be void as affecting persons beyond the limits of the municipality, where it only touches those who bring or send their milk into the city for sale.

Gaming.

A tent occupied by a divorced man and his child as their only place of residence is held, in Hipp *v.* State (Tex. Crim. App.) 62 L. R. A. 973, to be a private residence occupied by a family, within the meaning of a statute punishing gaming except when it occurs at such residence.

Garnishment.

A claim for unliquidated damages arising out of contract is held, in Wilde *v.* Mahaney (Mass.) 62 L. R. A. 813, not to be the subject of trustee process, although a verdict has been rendered for it in favor of the principal debtor against the trustee, in which judgment has not been entered, under a statute authorizing process only when the trustee has in his possession "goods, effects, or credits" of the principal debtor, and contemplating that the whole matter shall be disposed of on the answer of the trustee.

Gas.

See MINES.

Guaranty.

The guarantors of a negotiable note are held, in Lemert *v.* Guthrie (Neb.) 62 L. R. A. 954, to be discharged from liability, where upon failure of the makers, while solvent, to pay the note at maturity, no notice is given the guarantors, and demand is not made upon them until eighteen months after maturity, when the makers have become insolvent.

Handwriting.

See EVIDENCE.

Highways.

If a space inside the building line is permitted by the abutting owner to remain open, and to be used as part of the sidewalk, it is held, in Rachmel *v.* Clark (Pa.) 62 L. R. A. 959, that he must exercise due care not to place there dangerous obstructions that may result in injury to persons lawfully on the walk.

Husband and Wife.

The habitual and intemperate use of morphine, unaccompanied by any conduct reasonably justifying an apprehension of danger to life, limb, or health, is held, in Ring *v.* Ring (Ga.) 62 L. R. A. 878, not to be such cruel treatment as the law recognizes as a ground for divorce.

The obligations imposed upon a man by a second marriage are held, in State *ex rel.*

Brown *v.* Brown (Wash.) 62 L. R. A. 974, not to relieve him from the payment of alimony according to the provisions of a divorce decree.

Infants.

In case an infant avoids a contract by which he has purchased property from another infant, the purchase price of which has been spent by the latter, it is held, in Drude *v.* Curtis (Mass.) 62 L. R. A. 755, that he cannot maintain trover as for a conversion of the property, since the defendant has at most been guilty only of a breach of an implied contract to return the purchase money, and this the law permits him, because of his infancy, to avoid.

Insurance.

A plain limitation upon the authority of the medical examiner and solicitor of a life insurance company, of which an applicant is bound to take notice and by which he is bound, is held, in Metropolitan L. Ins. Co. *v.* Dimick (N. J. Err. & App.) 62 L. R. A. 774, to be made by stipulations in the application that the statements contained in it, and those made to the medical examiner, are true and correctly recorded, and that no information not therein contained, received, or acquired at any time by any person shall be binding on the company, or shall modify the declarations and warranties therein contained; that the persons writing the answers and statements shall be deemed the agents of the insured, and not of the company; and that the company is not to be deemed responsible for the preparation of the application even if the stipulations are inefficacious to make the employees of the company the agents of the insured.

A woman is held, in Opitz *v.* Karel (Wis.) 62 L. R. A. 982, to have an insurable interest in the life of a man whom she is engaged to marry.

Intoxicating Liquors.

An incorporated social club is held, in State *ex rel.* Stevenson *v.* Law & Order Club (Ill.) 62 L. R. A. 884, to have no right, without a license, to dispense liquors to its members in exchange for checks delivered to them upon their payment of special assessments levied to meet the cost of procuring the liquors, under a statute providing that giving away intoxicating liquors, or other shift or device to evade the provisions of the act, shall be held to be an unlawful sale.

Jury.

See CONSTITUTIONAL LAW.

Landlord and Tenant.

Injuries to a licensee of a tenant caused by the defective condition of the premises are held, in Brady *v.* Klein (Mich.) 62 L. R. A. 909, to give the licensee no right to maintain an action upon the landlord's covenant to repair.

One who leases a lot for the purpose of producing oil or gas therefrom, reserving to herself a part of the oil produced, but reserving no control or right to direct the manner of conducting the work, and who surrenders complete possession and control to the lessees during the term of the lease,—is held, in Langenbaugh *v.* Anderson (Ohio) 62 L. R. A. 948, not to be liable to the owner of property to which oil escapes through the negligence of the lessees.

Malice.

Merchants who offer goods of a certain manufacturer, which they own, at a cut price, for the purpose of injuring his trade and depressing the market value of his product, are held, in Passaic Print Works *v.* Ely & Walker Dry Goods Co. (C. C. A. 8th C.) 62 L. R. A. 673, not to be liable for conspiracy.

A combination of individuals for the purpose of inflicting a malicious injury upon another by ruining his business is held, in State *ex rel.* Durner *v.* Huegin (Wis.) 62 L. R. A. 700, to be actionable both at common law and under the statute.

Master and Servant.

See also CARRIERS.

A duty to give a letter of recommendation or clearance card to an employee who is discharged or quits is held, in Cleveland, C. C. & St. L. R. Co. *v.* Jenkins (Ill.) 62 L. R. A. 922, not to be imposed upon the employer by the common law.

A discharged railroad employee is held, in New York, C. & St. L. R. Co. *v.* Schaffer (Ohio) 62 L. R. A. 931, to have no right of action for damages against the company which discharged him for refusal to furnish him with a clearance card or statement of the record of his service, although he may have been unable to obtain other employment in consequence of such refusal by the company.

Milk.

See FOOD

Mines.

A condition subsequent to develop the property upon discovering oil or gas in paying quantities is held, in Gadbury *v.* Ohio & I. Consol. Nat. & Illum. Gas Co. (Ind.) 62 L. R. A. 895, to be implied in a contract giving the right, for a nominal consideration, to enter upon and explore for oil or gas, where there is a provision that, upon failure to drill a well within a specified time, the lessee shall pay a certain amount per day while such completion is delayed.

Mortgage.

The mere fact that the witnesses who attest the signature of a mortgagor, and the notary public taking his acknowledgment, are stockholders of, but not otherwise interested in, the corporation named in such mortgage as grantee, is held, in Read *v.* Toledo Loan Co. (Ohio) 62 L. R. A. 790, not to render the mortgage void.

Municipal Corporations.

See FOOD.

Negligence.

A voluntary wilful act of suicide of a person rendered insane by a negligent injury, who knows the purpose and physical effect of his act, is held in Daniels *v.* New York, N. H. & H. R. Co. (Mass.) 62 L. R. A. 751, to be such a new and independent agency as does not come within and complete a line of causation from the accident to the death, so as to render one guilty of the negligence responsible for the death.

An electric railway company whose line traverses a city is held, in Crisman *v.* Shreveport Belt Ry. Co. (La.) 62 L. R. A. 747, to be negligent in placing one of its cars in charge of a young man only eighteen years old, whose experience in the handling of an electric car dates only twenty days back.

Notice.

See GUARANTY.

Oil.

See MINES.

Principal and Agent.

See BANKS.

Proximate Cause.

See NEGLIGENCE.

Public Institutions.

The National Home for Disabled Volunteer Soldiers is held, in Overholser *v.* National Home for Disabled Vol. Soldiers (Ohio) 62 L. R. A. 936, to be a corporation created by Congress for the purpose of performing an appropriate and constitutional function of the Federal government, and as such to be part of the government of the United States, and not to be liable to be sued in an action for tort.

Sale.

Under a contract for sale of property,

"buyer to give shipping instructions," "to be delivered as packed," "f. o. b." at place of shipment, it is held, in Samuel M. Lawder & Sons Co. v. Albert Mackie Grocery Co. (Md.) 62 L. R. A. 795, that payments must be made at the place of shipment.

Solicitation.

Merely soliciting a woman to sexual intercourse is held in Reed v. Maley (Ky.) 62 L. R. A. 900, to give her no right of action.

Street Railways.

See NEGLIGENCE.

Trusts.

A trust created by a devise to the testator's wife, of all his property in trust for her and his children with full power to continue his business if for the best interest of his estate, is held, in Holmes v. Walter (Wis.) 62 L. R. A. 986, not to be void for uncertainty merely because the particular manner of executing it is not pointed out.

Waters.

See COVENANTS.

New Books.

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"Lawyers."—3 Canadian Law Review, 101.

"What is a 'Month?'"—3 Canadian Law Review, 114.

"Town Practice for the Tyro."—23 Law Notes (Eng.) 78.

"Tenant's Liability for Improvement Charges."—23 Law Notes (Eng.) 79.

"One of the Law's Iniquities. (Ignorantia facti excusat: ignorantia juris non excusat.)."—7 Law Notes, 226.

"Determinable Fees in American Jurisdictions."—17 Harvard Law Review, 297.

"The Limitation of the Right of Appeal in Criminal Cases."—17 Harvard Law Review, 317.

"Suicide and the Law."—17 Harvard Law Review, 331.

"International Right of Way."—12 American Lawyer, 54.

"Marriage and Divorce in France."—12 American Lawyer, 61.

"The Evolution of the Fourteenth Amendment."—12 American Lawyer, 65.

"The Indeterminate Sentence."—12 American Lawyer, 72.

"Negotiable Promissory Notes."—8 Kansas City Bar Monthly, 3.

"Personal Liberty in France."—13 Yale Law Journal, 215.

"Percolating Waters: The Rule of Reasonable User."—13 Yale Law Journal, 222.

"The Attitude of Public Policy towards the Contracts of Heirs Expectant and Reversioners."—13 Yale Law Journal, 228.

"Res Judicata and Estoppel."—13 Yale Law Journal, 245.

"The Constitutionality of the Initiative and Referendum."—13 Yale Law Journal, 248.

"The Judicial System of the Proprietary and Royal Governments in North Carolina to 1776."—1 North Carolina Journal of Law, 128.

"Forcible Entry by Landlord without Process of Law as a Means of Obtaining Possession of Demised Premises."—58 Central Law Journal, 201.

"Entrapment or Decoy Solicitations as a Defense to Criminal Prosecution."—58 Central Law Journal, 206.

"Validity of Conveyances Made within Four Months of Bankruptcy with Intent to Hinder and Defraud Creditors without Beneficiary's Knowledge of a Debtor's Intent."—58 Central Law Journal, 211.

"Hearing Cases *in Camerâ*."—68 Justice of the Peace, 111.

"The Laws of Bank Checks — Practical Series."—21 Banking Law Journal, 79.

"State Police Powers and Federal Property Guarantees."—4 Columbia Law Review, 153.

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The Humorous Side.

"WOULD ACCOMPLISH TO BE HIS WIFE."—The idyllic marital history of a plaintiff suing for the death of an alleged husband named Daniel Blanks is told in a recent Mississippi case. Prior to her so-called marriage with Blanks she had been the mother of an illegitimate child and after that had married a man named Parker. Her testimony as to this matrimonial experience is thus quoted in the opinion of the court: "Q. Were you ever married legally? A. I don't know, sir. Q. Didn't you say you were married to Lawson Parker? A. I had a man by that name. Q. Were you legally married to him? A. I don't know. He and a preacher were there, by the name of Hamp Crawford. Q. Did he perform a ceremony? A. I don't know, sir. He said something. Q. Did he pronounce you man and wife? A. I don't know, sir; but we went together under that head." The story, as told by the judge, continues as follows: "She says this marriage with Lawson was at her father's house. Pursuant to that maneuver, Maggie and Lawson lived together 'under that head'—that is, under the head of husband and wife—for, as she says, two or three years, when Lawson, weary of welldoing, threw off the connubial yoke, and of his own motion, without disturbing the courts, left for parts unknown. Something more than a year after his departure a singular courtship occurred. She says that she was sitting in her door, when Daniel Blanks, the deceased, who was a perfect stranger, whom she had never even seen before, came up, and she says: 'He preferred he was lonely. I was sitting in the door there by myself, and he asked me if I was lonely, and I preferred yes, I was lonely, and he asked then if I would like to be his wife, if I would be the mother of his child, and I said I thought I could, and he asked me if I could live in his house and treat him adjustably, and I told him I thought I could. Q. Did you tell him in what way you wanted to live? A. As his wife. That is the way I went to him. I did not reconsider myself to have any husband after Lawson left me, and I was living there from hand to mouth, and I wanted a husband, and he said he would be a husband to me, and I said as I was a woman I would accomplish to be his wife, and I went with him.'" This alliance, which the court describes as a "primitive, prepluvial agreement," lasted for many years and up to the time of Daniel's death, but the court found the facts insufficient to show that her bereavement constituted widowhood.